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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

13 **DANA MARIE CONNOLLY,**
14 **AKA DANA CONNOLLY**
9014 Montrose Way
San Diego, CA 92122

15
16 **Registered Nurse License No. 647007**
Nurse Practitioner Certificate No. 15409
17 **Nurse Practitioner Furnishing Certificate**
No. 15409

18 Respondent.

Case No. 2013-342

A C C U S A T I O N

19
20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
23 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
24 Consumer Affairs.

25 2. On or about October 27, 2004, the Board of Registered Nursing issued Registered
26 Nurse License Number 647007 to Dana Marie Connolly, aka Dana Connolly (Respondent). The
27 Registered Nurse License was in full force and effect at all times relevant to the charges brought
28 herein and will expire on March 31, 2014, unless renewed.

3. On or about November 10, 2004, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 15409 to Dana Marie Connolly, aka Dana Connolly (Respondent). The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2014, unless renewed.

4. On or about November 4, 2005, the Board of Registered Nursing issued Nurse Practitioner Furnishing Certificate Number 15409 to Dana Marie Connolly, aka Dana Connolly (Respondent). The Nurse Practitioner Furnishing Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2014, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

8. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

1 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 10. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a
7 board within the department pursuant to law to deny an application for a license or to
8 suspend or revoke a license or otherwise take disciplinary action against a person who
9 holds a license, upon the ground that the applicant or the licensee has been convicted
10 of a crime substantially related to the qualifications, functions, and duties of the
11 licensee in question, the record of conviction of the crime shall be conclusive
12 evidence of the fact that the conviction occurred, but only of that fact, and the board

13 may inquire into the circumstances surrounding the commission of the crime in order
14 to fix the degree of discipline or to determine if the conviction is substantially related
15 to the qualifications, functions, and duties of the licensee in question.

16 As used in this section, "license" includes "certificate," "permit," "authority,"
17 and "registration."

18 11. Section 2761 of the Code states:

19 The board may take disciplinary action against a certified or licensed nurse or
20 deny an application for a certificate or license for any of the following:

21 (a) Unprofessional conduct, which includes, but is not limited to, the
22 following:

23

24 (d) Violating or attempting to violate, directly or indirectly, or assisting in or
25 abetting the violating of, or conspiring to violate any provision or term of this chapter
26 [the Nursing Practice Act] or regulations adopted pursuant to it.

27

28 (f) Conviction of a felony or of any offense substantially related to the
29 qualifications, functions, and duties of a registered nurse, in which event the record of
30 the conviction shall be conclusive evidence thereof.

31

32 12. Section 2762 of the Code states:

33 In addition to other acts constituting unprofessional conduct within the meaning
34 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
35 licensed under this chapter to do any of the following:

36

1 (b) Use any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
3 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
4 dangerous or injurious to himself or herself, any other person, or the public or to the
5 extent that such use impairs his or her ability to conduct with safety to the public the
6 practice authorized by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription, consumption,
8 or self-administration of any of the substances described in subdivisions (a) and (b) of
9 this section, or the possession of, or falsification of a record pertaining to, the
10 substances described in subdivision (a) of this section, in which event the record of
11 the conviction is conclusive evidence thereof.

12
13 13. Section 2765 of the Code states:

14 A plea or verdict of guilty or a conviction following a plea of nolo contendere
15 made to a charge substantially related to the qualifications, functions and duties of a
16 registered nurse is deemed to be a conviction within the meaning of this article. The
17 board may order the license or certificate suspended or revoked, or may decline to
18 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
19 conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under the
21 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
22 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
23 guilty, or dismissing the accusation, information or indictment.

24 14. Section 2770.1 of the Code states:

25 As used in this article:

26 (a) "Board" means the Board of Registered Nursing.

27 (b) "Committee" means a diversion evaluation committee created by this
28 article.

(c) "Program manager" means the staff manager of the diversion program, as
designated by the executive officer of the board. The program manager shall have
background experience in dealing with substance abuse issues.

15. Section 2770.7 of the Code states:

(a) The board shall establish criteria for the acceptance, denial, or termination
of registered nurses in the diversion program. Only those registered nurses who have
voluntarily requested to participate in the diversion program shall participate in the
program.

(b) A registered nurse under current investigation by the board may request
entry into the diversion program by contacting the board. Prior to authorizing a
registered nurse to enter into the diversion program, the board may require the
registered nurse under current investigation for any violations of this chapter or any

1 other provision of this code to execute a statement of understanding that states that
2 the registered nurse understands that his or her violations that would otherwise be the
basis for discipline may still be investigated and may be the subject of disciplinary
action.

3 (c) If the reasons for a current investigation of a registered nurse are based
4 primarily on the self-administration of any controlled substance or dangerous drug or
5 alcohol under Section 2762, or the illegal possession, prescription, or nonviolent
6 procurement of any controlled substance or dangerous drug for self-administration
7 that does not involve actual, direct harm to the public, the board shall close the
8 investigation without further action if the registered nurse is accepted into the board's
diversion program and successfully completes the requirements of the program. If
the registered nurse withdraws or is terminated from the program by a diversion
evaluation committee, and the termination is approved by the program manager, the
investigation shall be reopened and disciplinary action imposed, if warranted, as
determined by the board.

9 (d) Neither acceptance nor participation in the diversion program shall preclude
10 the board from investigating or continuing to investigate, or taking disciplinary action
11 or continuing to take disciplinary action against, any registered nurse for any
unprofessional conduct committed before, during, or after participation in the
diversion program.

12 (e) All registered nurses shall sign an agreement of understanding that the
13 withdrawal or termination from the diversion program at a time when the program
14 manager or diversion evaluation committee determines the licensee presents a threat
to the public's health and safety shall result in the utilization by the board of diversion
treatment records in disciplinary or criminal proceedings.

15 (f) Any registered nurse terminated from the diversion program for failure to
16 comply with program requirements is subject to disciplinary action by the board for
17 acts committed before, during, and after participation in the diversion program. A
18 registered nurse who has been under investigation by the board and has been
terminated from the diversion program by a diversion evaluation committee shall be
reported by the diversion evaluation committee to the board.

19 16. Section 2770.11 of the Code states:

20 (a) Each registered nurse who requests participation in a diversion program
21 shall agree to cooperate with the rehabilitation program designed by the committee
22 and approved by the program manager. Any failure to comply with the provisions of
23 a rehabilitation program may result in termination of the registered nurse's
participation in a program. The name and license number of a registered nurse who is
terminated for any reason, other than successful completion, shall be reported to the
board's enforcement program.

24 (b) If the program manager determines that a registered nurse, who is denied
25 admission into the program or terminated from the program, presents a threat to the
26 public or his or her own health and safety, the program manager shall report the name
27 and license number, along with a copy of all diversion records for that registered
28 nurse, to the board's enforcement program. The board may use any of the records it
receives under this subdivision in any disciplinary proceeding.

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

18. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(March 14, 2012 Criminal Conviction for DUI on February 24, 2011)**

5 20. Respondent has subjected her license to disciplinary action under sections 490 and
6 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related
7 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
8 follows:

9 a. On or about March 14, 2012, in a criminal proceeding entitled *People of the State*
10 *of California v. Dana Marie Connolly*, in San Diego Superior Court case number M125886,
11 Respondent was convicted by a jury for violating Vehicle Code section 23152(a), driving under
12 the influence of alcohol, Vehicle Code section 23152(b), driving with a blood alcohol content of
13 .08 percent or more.

14 b. The facts that led to the conviction are that on or about February 24, 2011 at
15 approximately 2:30 p.m., an officer from the San Diego Sheriff's Department responded to a
16 dispatch concerning a traffic collision in the Comfort Inn parking lot off Mission Bay Drive in
17 San Diego. Respondent was the driver of the white Dodge Caravan that caused the traffic
18 collision. The officer approached Respondent, who was sitting in the driver's seat of the
19 Caravan, and asked her how much she had to drink. Respondent reported that she had one glass
20 of wine at 2:00 a.m. in her hotel room. When speaking to Respondent, the officer noticed that she
21 had a lax face and jaw, that Respondent spoke very slow and had slurred speech. The officer also
22 observed the smell of an alcoholic beverage coming from Respondent's person. Respondent
23 informed the officer that she was under the care of a doctor for alcoholism and depression, and
24 that she was currently taking prescription medication. After failing to complete the field sobriety
25 tests, Respondent was arrested and her vehicle was searched. During the search of her vehicle,
26 the officer discovered a blue backpack on the floor behind the driver's seat which contained a 750
27 ml glass bottle of Hazelnut Kahlua that was half consumed and various bottles of prescription
28 medicine.

1 c. A witness to the collision was interviewed by another officer. The witness reported
2 that when Respondent checked out of the motel, he observed that Respondent's eyes were glassed
3 over, that she was staggering around the lobby, and that Respondent appeared to be under the
4 influence of something. The witness asked Respondent if she was driving, and Respondent said,
5 "no, my husband is going to drive me." A few minutes after Respondent checked out, the witness
6 heard a vehicle start and he saw Respondent driving her van. The witness observed Respondent
7 backing up from the parking space and then hitting a wall in the motel parking lot, causing paint
8 damage to the wall and a dent in Respondent's vehicle.

9 d. As a result of the conviction, Respondent was ordered to serve ninety-six hours in
10 custody, required to pay fines and fees, ordered to enroll and complete the Multiple Conviction
11 Program and MADD program, and ordered to serve five years probation. On June 15, 2012, the
12 Court revoked Respondent's probation for failing to appear or comply with the terms of her
13 probation, and ordered a bench warrant for Respondent's arrest on July 2, 2012. On July 21,
14 2012, Respondent was arrested on the warrant and on September 6, 2012, Respondent's probation
15 was formally reinstated and continued on the same terms and conditions.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(September 9, 2010 Criminal Conviction for Wet Reckless on April 20, 2010)**

18 21. Respondent has subjected her license to disciplinary action under sections 490 and
19 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially related
20 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
21 follows:

22 a. On or about September 9, 2010, in a criminal proceeding entitled *People of the*
23 *State of California v. Dana Marie Connolly*, in San Diego Superior Court case number M108388,
24 Respondent was convicted on her plea of guilty for violating Vehicle Code section 23103(a), wet
25 reckless, which was reduced as a lesser offense of count one (Vehicle Code section 23152(a)).
26 Respondent's blood alcohol content was .13 percent.

27 b. The facts that led to the conviction are that on or about April 20, 2010, an officer
28 from the California Highway Patrol was traveling northbound on Interstate 5, when he observed a

1 white Dodge minivan traveling at a high rate of speed. As the Dodge passed the officer's vehicle,
2 the officer visually estimated its speed at approximately 80 mph. The officer immediately
3 initiated a bumper pace on the Dodge and observed speeds between 80-82 mph. The officer then
4 initiated a traffic stop and identified Respondent as the driver of the vehicle. As the officer spoke
5 to Respondent, he noticed that Respondent's eyes were red and watery, that she had slurred
6 speech, and that there was an odor of an alcoholic beverage emitting from her vehicle. When
7 Respondent reached towards her glove box to obtain her registration and insurance, the Dodge
8 began rolling forward. Respondent did not realize that the vehicle was rolling forward until the
9 officer shouted at her to stop the vehicle. Respondent admitted that she consumed one glass of
10 wine, earlier in the evening. When Respondent exited the vehicle, the officer observed that
11 Respondent had an unsteady gait and that she was rambling. Respondent failed the field sobriety
12 test and was arrested for driving under the influence of alcohol.

13 c. As a result of the conviction, on or about September 9, 2010, Respondent was
14 ordered to serve three years summary probation, required to pay all fines, fees, and restitution,
15 ordered to complete three days of public service program, required to enroll and complete the
16 First Conviction Program and MADD program, ordered not to drive with a measurable amount of
17 alcohol/drugs in blood, among other terms.

18 THIRD CAUSE FOR DISCIPLINE

19 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

20 22. Respondent has subjected her registered nurse license to disciplinary action under
21 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about February
22 24, 2011 and April 20, 2010, Respondent used alcoholic beverages to an extent or in a manner
23 that was dangerous and injurious to herself, and to others in that she operated a motor vehicle
24 with a high blood alcohol concentration, as set forth in paragraphs 20 through 21, above, which
25 are incorporated herein by reference.
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28

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Conviction of an Alcohol-Related Criminal Offense)**

3 23. Respondent has subjected her registered nurse license to disciplinary action under
4 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about
5 September 9, 2010 and March 14, 2012, Respondent was convicted of criminal offenses
6 involving the consumption and/or self-administration of alcohol, as set forth in paragraphs 20
7 through 21, above, which are incorporated herein by reference.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct)**

10 24. Respondent is subject to disciplinary action under section 2761(a) of the Code in that
11 Respondent committed unprofessional conduct, in that Respondent failed to comply with the
12 Board's Diversion Program as she agreed to do. The circumstances are as follows:

13 a. On or about May 9, 2012, Respondent contacted the Board of Registered Nursing's
14 MAXIMUS Diversion Program to voluntarily participate in the program. During her intake
15 interview, Respondent reported that she had a drinking problem, but that she last consumed
16 alcohol in April 2011. By enrolling in MAXIMUS, Respondent agreed to abstain from the use of
17 over-the-counter drugs, alcohol, and all other mind-altering drugs unless prescribed, agreed to
18 submit copies of prescriptions for all prescription medications she was currently taking, agreed to
19 attend weekly 12-step meetings, agreed to attend and complete an aftercare program, agreed to
20 self-report her compliance on a monthly basis, agreed to attend Nurse Support Group (NSG)
21 meetings, agreed to contact her Clinical Case Manager (CCM), agreed to submit to urine tests to
22 monitor drug and alcohol usage, to call in or log-in on a daily basis to determine if she was
23 required to submit to testing that day, and to provide specimens that result in the effective
24 monitoring of drug and alcohol usage (within the acceptable ranges of Creatinine (> 20 mg/dl)
25 and Specific Gravity (>1.0003))¹, among other terms.

26
27 ¹ Specimens which return below the acceptable ranges of Creatinine (> 20 mg/dl) and
28 Specific Gravity (>1.0003) undermine the random drug testing.

1 b. On May 27, 2012, Respondent did not call in or log-in with First Lab to see if she was
2 required to submit to testing that day. On May 30, 2012, Respondent missed the scheduled
3 screening test. When Respondent was contacted on May 31, 2012 about her missed test that day,
4 Respondent slurred her words, was argumentative and had a difficulty following the conversation.
5 On May 31, 2012, Respondent tested positive for Dextromethorphan 3360 ng/mL and dilute test
6 result (Creatinine 9.9 mg/dl and Specific Gravity >1.0025), which was outside the acceptable
7 range. When Respondent was contacted about the positive test result, she again had slurred
8 speech and she began to yell at her case manager. Respondent admitted that she was using
9 Dextromethorphan daily for a chronic cough. Respondent stated that she did not need to be in
10 Diversion and that she had "bigger fish to fry" and that Diversion was "not a priority for her."

11 c. On or about June 6, 2012, Respondent was terminated from MAXIMUS and deemed
12 a public safety risk.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(Violation of the Chapter)**

15 25. Respondent is subject to disciplinary action under section 2761(d) of the Code for
16 failure to comply with section 2770.11(a), as set forth in paragraph 24, above, which are
17 incorporated herein by reference, for failure to comply with the Board's diversion program.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License Number 647007, issued to Dana
22 Marie Connolly, aka Dana Connolly;

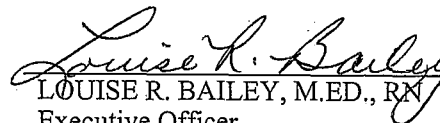
23 2. Revoking or suspending Nurse Practitioner Certificate Number 15409, issued to Dana
24 Marie Connolly, aka Dana Connolly;

25 3. Revoking or suspending Nurse Practitioner Furnishing Certificate Number 15409,
26 issued to Dana Marie Connolly, aka Dana Connolly;

1 4. Ordering Dana Marie Connolly, aka Dana Connolly to pay the Board of Registered
2 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
3 Business and Professions Code section 125.3;

4 5. Taking such other and further action as deemed necessary and proper.
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7
8 DATED: October 29, 2012


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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